

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of Petition for Penalty
Relief of:

Imdad Yusufaly, M.D.

Physician's and Surgeon's
Certificate No. A 50931

Respondent

File No. 18--1999-100733

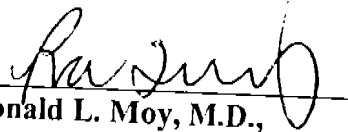
DECISION

The attached **Proposed Decision** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on December 24, 2004

IT IS SO ORDERED November 24, 2004

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald L. Moy, M.D.,
Chair
Panel B
Division of Medical Quality

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of Petition for Penalty Relief
of:

IMDAD YUSUFALY, M.D.
36243 Inland Valley Dr., #60
Wildomar, CA 92595

Physician's and Surgeon's
Certificate No. A50931

Petitioner.

Case No. 18-1999-100773

OAH No. L2004090260

PROPOSED DECISION

On October 19, 2004, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Thomas Lazar, Deputy Attorney General, represented the Attorney General.

Nancy M. Yaessen, Attorney At Law, represented petitioner.

The matter was submitted on October 19, 2004.

FACTUAL FINDINGS

1. On March 30, 2004, petitioner signed a Petition for Penalty Relief and submitted it to the Medical Board of California (Board). Petitioner sought termination of probation.

2. On June 24, 1992, the Board issued Physician's and Surgeon's certificate No. A50931 to petitioner.

Petitioner attended medical school in Karachi, Pakistan, graduating in 1984. He did a rotating internship and then a residency in neurology at St. Louis University. He became board certified in neurology in 1992.

Petitioner's primary medical office is in Wildomar, near Temecula. He also practices in Corona, Anaheim, Santa Ana, and Norwalk.

3. On August 9, 2000, the Executive Director of the Board filed Accusation No. 18-1999-100733 against petitioner. The accusation alleged petitioner had committed unprofessional conduct, gross negligence, and incompetence in his treatment of one female patient when he had sexual relations with her over a three-year period. The accusation also alleged he falsely denied committing any sexual acts with her when he was interviewed by police and board investigators.

The Board and petitioner entered into a Stipulated Settlement and Disciplinary Order, which the Board adopted on December 28, 2001, effective January 25, 2002. Petitioner admitted he engaged in sexual misconduct in violation of Business and Professions Code section 726, conceded the Board could make a prima facie case in support of the accusation, and agreed his license was subject to discipline. The disciplinary order provided petitioner's license was revoked, the revocation was stayed, and he was placed on probation for seven years on condition that he serve a 30-day suspension, take an ethics course, undergo a psychiatric examination, not practice on female patients until the Board was notified he was mentally fit to practice medicine safely on females, undergo psychotherapy, have a chaperone present, not supervise physician assistants, and be subject to the Board's standard terms and conditions. The order noted petitioner had obtained a psychiatric evaluation from Dr. Dominick Addario, which was provided to the Board but not made a public record, and petitioner asked the Board to accept the report as compliance with the terms of the order relating to a psychiatric examination and prohibition against treating female patients.

4. In his narrative statement, petitioner wrote he made a grave error in judgment by engaging in sexual relations with a patient, and that conduct led to this disciplinary action, a criminal case, and a civil case. He indicated he settled the civil case by paying a judgment and writing a letter of apology to the patient, and the criminal case was dismissed because a remedy via a civil action was available and the civil action had been settled.

Petitioner indicated he has complied with all the terms of probation. He noted he paid probation costs and was seen regularly by a psychiatrist. He indicated he had taken steps even before settlement discussions began to ensure his misconduct would not happen again. He wrote he had started psychological counseling, instituted a policy within his office of having a female chaperone present when he examined a female patient, and had submitted to a full psychiatric evaluation by Dr. Addario. Petitioner added he had set up a procedure at Corona Regional Medical Center to provide for a chaperone.

Petitioner explained the reason he wanted to terminate probation was because he had paid dearly in emotional, financial, and professional terms for his mistake. He believed he

has acknowledged his mistake and attempted to make amends every way possible and made a strong effort to ensure public safety would not be compromised by any similar conduct in the future. He felt he had learned a valuable and costly lesson.

Since being on probation, petitioner has continued to practice neurology but he has lost numerous patients because he has lost contracts with HMOs and PPOs. His patients have had to see other neurologists. He also lost his malpractice insurance and had to accept insurance with a high risk carrier, at a substantial increase in cost. He had previously served on medical staff committees, but could no longer do that.

5. Dr. Addario, a clinical professor of psychiatry at UCSD, wrote a Supplemental Medical-Legal Psychiatric Report dated March 15, 2004 after evaluating petitioner that day. He indicated that in his original report of October 5, 2001, which had been submitted to the Board in connection with the settlement agreement, he had found petitioner was "unquestionably rehabilitable." He found no evidence of psychopathology or sociopathic behaviors at that time, and petitioner's elements of depression and anxiety, which were mild, were in reaction to the consequences of his actions. In the current report, Dr. Addario arrived at an Axis I diagnosis of occupational problem associated with boundary violations during the course of medical practice, with associated stressors; bereavement, resolved; and adjustment disorder with depressed mood, resolved. He found no personality disorders.

In Dr. Addario's opinion, petitioner demonstrated virtually no evidence of impairment, limitation, or dysfunction that would prevent him from practicing medicine without restriction. He found petitioner had complied with all requests of the Board and was genuinely remorseful. He noted there was no recidivism and no new cases, petitioner had a positive home environment, and he supported his developmentally disabled child. The bases of his opinion were: There was no evidence of psychopathology; excellent compliance with all requirements of the Board; absence of any patient complaints or other difficulties; and a stable home and environment.

6. Jeffrey Crow, Ph.D., a marriage, family and child therapist, has been seeing petitioner in outpatient psychotherapy since February 6, 2002. He wrote a letter dated March 26, 2004, in which he indicated petitioner had been open and cooperative and professional. He noted petitioner had told him there had been no incidences of sexual misconduct prior to or after the incident. He wrote petitioner was not a danger to any of his patients of the general public, and he felt this was a one-time incident that will not recur. Dr. Crow indicated he had reviewed Dr. Addario's initial report to the Board and believed petitioner had met the goals set forth in the report.

7. Petitioner submitted seven additional letters from physicians and others who have known him and who attested to his professionalism and character.

8. Petitioner testified at the hearing. In addition to what he had written in his narrative statement, he testified his private practice has gone down 60 percent by not being on insurance panels and his hospital practice has declined by 80 percent. In Temecula, he

had seen about half of the neurology patients because there were only two neurologists in the area; now he sees about five percent. In Corona, where three neurologists practice and he saw about a third of the patients, he now sees only a small percentage. As a result, petitioner has marketed himself to clinics and has begun seeing patients in other areas of the state, including Orange County. He has begun testing in workers' compensation cases. He noted that other doctors cannot refer patients to him.

Petitioner testified he has completed all the terms of probation, paid the investigation costs, and paid the cost of probation. He served the suspension.

9. Petitioner has completed 93 CME credits since January 2002. On May 22, 2003, he lectured to the medical staff at Southwest Healthcare System on the management of migraines.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2307 provides in part:

. . . the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

2. Business and Professions Code section 2229 provides in part:

(a) Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

3. Petitioner presented evidence in the form of the opinions of a psychiatrist and an MFT that petitioner did not represent a danger to the public, and those opinions should be accorded significant weight. The other letters petitioner submitted and his demeanor while he testified added to the evidence he presented. Petitioner expressed remorse for his misconduct and demonstrated he was committed to not repeating it.

The most important factor, however, at this point is the time petitioner has been on probation. The settlement called for a period of probation of seven years. The seriousness of petitioner's misconduct called for such a lengthy period. Probation allows the Board to monitor petitioner's conduct over time to assure itself the public will truly be protected when a physician is returned to practice without the monitoring afforded by probation.

Petitioner has served less than three years of the seven-year probation period. The period of time he has been on probation is less than the length of time his illicit sexual

relationship lasted. While opinions of others are important for the Board to use in exercising its discretion, it does not compare to a track record, and petitioner's track record of compliance with the terms of probation is a relatively short one. In this case, more time is needed before the Board can determine that petitioner's efforts at rehabilitation have taken hold, and that he can practice medicine safely without supervision.

4. Cause to grant the petition of Imdad Yusufaly, M.D., for penalty relief by terminating probation was not established by reason of Finding 3 and Legal Conclusion 3

ORDER

The petition of Imdad Yusufaly, M.D. for penalty relief is denied.

DATED: Nov 2, 2004

A handwritten signature in cursive script, appearing to read 'Alan S. Meth', written over a horizontal line.

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings